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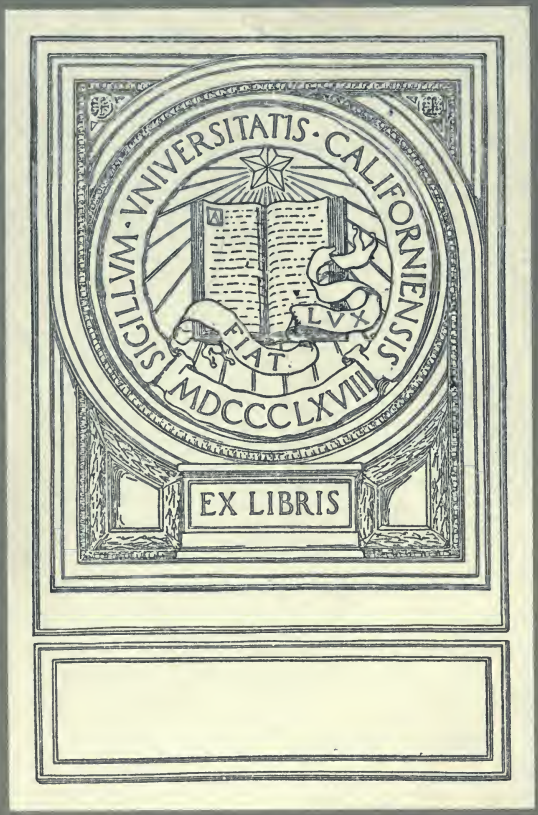
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METHODS OF OBTAINING CONFESSIONS AND INFORMATION FROM PERSONS ACCUSED OF CRIME

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JACKSONVILLE, FLORIDA, 1921

By

B. OGDEN CHISOLM

AND

HASTINGS H. HART

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METHODS OF OBTAINING CONFESSIONS AND INFORMATION FROM PERSONS ACCUSED OF CRIME

By B. Ogden Chisolm and Hastings H. Hart
Of New York City

The practice commonly known as the "Third Degree" has long been used as a means of obtaining information from persons under suspicion of crime.

The belief that abuses exist in the use of this method prevails widely throughout the United States and it is fostered by numerous cases reported in the public press.

An eminent Chicago lawyer recently described this practice as follows: "The 'third degree' is a popular phrase, meaning a superlative degree of pressure applied to accused persons and persons detained as witnesses to compel them to confess or to give evidence such as the prosecutor desires—whether true or not."

The Supreme Court of Tennessee made judicial declaration of the existence of such abuses in the case of McGlothlin vs. State, 42 Tenn., as follows:

> Evidence of confessions is liable to a thousand abuses. They are generally made by persons under arrest, in great agitation and distress, when every ray of hope is eagerly caught at, and frequently under the delusion, though not expressed, that the merits of a disclosure will be productive of personal safety—in want of advisers, deserted by the world, in chains and degradation, their spirits sunk, fear predominant, hope fluttering around, purposes and views momentarily changing, a thousand plans alternating, a soul tortured with anguish, and difficulties gathering into a multitude. How uncertain must be the things which are uttered in such a storm of passion.

In this case the court adopted the rule laid down in the case of Deathridge vs. State, 31 Tenn.:

If a confession be free and voluntary; if it appear to proceed merely from a sense of guilt, and not from the influence of hope or fear in any degree, it is competent. But if the confession be the result of hope or fear, induced or excited by a person having power over the prisoner, it becomes incompetent.

It is the general practice throughout the United States for police officers or prosecuting attorneys (usually the former), immediately upon the arrest of a suspect and before the formal inquiry of a magistrate, to undertake an informal investigation for the purpose of procuring a confession of crime or such information as will make it possible to secure a conviction.

There are three possible sources of information with reference to such investigations: the public press, which frequently publishes what purport to be accounts of the practice of the third degree; individuals who have been subjected to such examinations, and public officers—prosecuting attorneys, chiefs of police, and detectives who are accustomed to conduct these preliminary investigations.

On careful consideration, however, it appeared that the most promising source of information would be the sworn officers of the law who are accustomed to conduct such investigations. Accordingly, a questionnaire was prepared and was sent out to the prosecuting attorney and the chief of police in each of 100 of the larger cities of the United States. Sixty-six replies were received from 28 district or prosecuting attorneys and 38 chiefs of police, covering 51 cities in 27 states.

Answers to inquiries addressed to prosecuting attorneys were received from the following named cities:

Boston
Charleston, S. C.
Dallas
Denver
Detroit
Duluth
Evansville, Ind.
Grand Rapids
Harrisburg
Houston
Kansas City, Mo.
Memphis
Nashville
New Bedford
New Orleans
Peoria
Pittsburgh
Providence
Rochester
St. Joseph, Mo.
St. Louis
St. Paul
Salt Lake City
Schenectady
Spokane
Springfield, Mass.
Tacoma
Worcester

Answers to inquiries addressed to chiefs of police were received from the following named cities:

Albany
Atlanta
Baltimore
Boston
Buffalo
Charleston, S. C.
Cleveland
Columbus
Dayton
Des Moines
Detroit
Fall River
Fort Wayne
Grand Rapids
Harrisburg
Indianapolis
Kansas City, Mo.
Louisville
Lowell
Manchester, N. H.
Minneapolis
New Bedford
Norfolk
Paterson, N. J.
Portland, Oregon
Providence
Rochester
St. Louis
Salt Lake
San Antonio
Savannah
Schenectady
Springfield, Mass.
Trenton
Washington
Waterbury
Worcester

The Questionnaires

The two questionnaires sent out included the following questions:

1. By whom should such preliminary inquiries be conducted: the prosecuting attorney's office or the police department?
2. Have you any law regulating such preliminary inquiries?
3. (To prosecuting attorneys only.) If no law, should there be one?
4. Is it customary to advise the prisoner as to his rights and the use which may be made of his statements?
5. How far is it proper to promise immunity or leniency?
6. How far is it proper to go in "grilling" and cross-questioning?
7. Is it advisable to seek such information by threats or physical suffering?
8. (To prosecuting attorneys only.) Is the principle of law that the accused may not be compelled to testify against himself applicable to these preliminary inquiries?

In considering the 66 replies to these questions, for the purposes of this study we shall accept each one of them exactly at its face value. We shall assume that all of the 66 writers have replied in perfect good faith and that their statements of fact are in strict accordance with the truth. As the replies to the questionnaires were entirely voluntary and no one of these officers could be expected to testify against himself, when these 66 officers, almost without exception, declared that they neither inflict nor tolerate any physical suffering we shall accept those statements with the inference that if any of those to whom the inquiry was addressed do indulge in such practices, they are numbered among the 134 who refrain from making any reply.

When it comes to the question of mental and nervous suffering, there is sufficient evidence in the replies received that the inflic-

tion of such suffering is a very common practice and that it is defended by many of our correspondents.

In discussing answers to the questionnaires, we shall not adhere to the original order of the questions.

THE LEGAL STATUS OF THE THIRD DEGREE

Laws and Police Regulations

From the reports of the prosecuting attorneys it appears that in most of the states from which the reports come there are court decisions like that already quoted in the case of Deathridge vs. State, 31 Tenn., declaring that confessions extorted by compulsion, fear, torture, or promises of immunity are incompetent as evidence against accused persons. Except for this restriction there is no law regulating the informal preliminary examination of suspects by prosecuting attorneys or police authorities except in the five states of South Carolina, Indiana, Missouri, Rhode Island, and Texas.

While confessions extorted by duress are rejected by the courts generally, there appears to be nothing in most of the states reported to prevent obtaining information from accused persons by duress with reference to other witnesses or other evidence which may be used against them.

In seven cities—Atlanta, Boston, Cleveland, Columbus, Norfolk, Portland, Oregon, and San Antonio—the conduct of such examinations is regulated by a rule of the police department. These laws and regulations cover 14 cities, but in the remaining 37 cities from which reports were received this proceeding is not controlled by either law or police ordinance. The examinations are conducted in some cities by the chief of police or his deputy; in others by the chief of detectives or his deputy; but in many cases the individual policeman or plain clothes man who makes the arrest conducts the examination in his own way, without restriction. Under these circumstances abuses must occur and undoubtedly do occur.

Need of Additional Legislation

The prosecuting attorneys were asked: If there is no law in your state, should there be one? Out of 28 replies received, only five declared in favor of such legislation; namely, the prosecuting

attorneys in Charleston, S. C.; Evansville, Ind.; Kansas City, Mo.; Springfield and Worcester, Mass.

We quote the following replies from those who oppose legislation:

The district attorney of Boston says: "I see no reason for having any law regarding this matter."

The county attorney in Duluth writes:

In my experience this matter of examinations by public officials has not been abused, and as long as that is true, I do not believe that there should be any statutory regulation thereof.

Massachusetts has no such law, and the district attorney in New Bedford writes:

I am unalterably opposed to the passage of any new law regulating the action of police officers in efforts to obtain confessions.

The district attorney in Rochester writes:

I positively do not think it should be regulated unless the provision of law would be one compelling defendants and all others who know about a crime to tell what they know.

The district attorney in Schenectady writes:

There are too many laws now which handicap and prevent the proper prosecution of persons who are guilty.

The prosecuting attorney in Spokane says: "Such laws would impair very greatly the disclosure of crime."

May the Accused Be Compelled to Incriminate Himself?

The prosecuting attorneys were asked: "Is the principle of law that an accused person may not be compelled to testify against himself applicable in these preliminary inquiries?"

Out of 28 attorneys replying, one did not answer the question; 20 replied that the principle does apply in such examinations; and seven replied that in their opinion it does not apply. These seven were from the cities of Boston, Duluth, Harrisburg, Kansas City, Mo., New Bedford, Rochester, and Salt Lake City.

The district attorney in Boston writes:

The principle of the law that a prisoner cannot be compelled to testify against himself is not applicable to preliminary inquiries in my opinion. It is simply applicable to statements under oath

in the presence of the court and in the course of trial where a man is in jeopardy.

The county attorney in Duluth writes:

It has been held in this state that the principle of law to which you allude does not apply to the preliminary examination.

The prosecuting attorney in Kansas City, Mo., writes:

It is an elementary principle of law that an accused person may not be compelled to testify against himself. We do not believe, however, that this rule is applicable to preliminary inquiries. If that procedure should be adopted, then in many instances it would be absolutely impossible to fix liability for crime.

The district attorney in New Bedford writes:

It is my opinion that the principle of law that an accused person may not be compelled to testify against himself is not applicable to preliminary inquiries . . . I am strongly of the opinion that the administration of our criminal law would entirely break down and criminals could ply their "professions" undisturbed if the officers charged with these preliminary investigations were hampered by laws regulating their conduct. . .

The district attorney of Rochester writes:

It is not [applicable], and if your committee feels that it can accomplish anything by legislation my only suggestion . . . would be legislation compelling every person who knows any fact concerning the commission of a crime against the peace of the people of the state to divulge it.

On the other hand, the associate prosecuting attorney in St. Louis writes:

This should apply to all preliminary inquiries, but in a great many cases it is not followed.

And the district attorney in Springfield, Mass., writes:

The principle stated is applicable, but of course the police pay little or no attention to it.

The Foregoing Opinions Important

It appears to a layman to be a matter of great significance and grave concern that seven prominent prosecuting attorneys out of 28 should declare emphatically their official opinion that the principle of law that an accused person may not be compelled to

testify against himself does not apply to informal preliminary investigations by police officers and detectives. The grave significance of these opinions appears when we turn the statement about. It means that an accused person may be compelled to testify against himself in an inquiry where he is left without counsel and without the protection of the law.

Is the Accused Advised as to His Rights?

We asked both prosecuting attorneys and chiefs of police: "Is it customary to advise the prisoner as to his rights and the use which may be made of his statements?"

Replies were received from 21 prosecuting attorneys and 30 chiefs of police, total 51. Seventeen prosecuting attorneys and 24 chiefs of police reported that it was their regular practice so to advise the prisoner; three prosecuting attorneys and five chiefs of police reported that it was usually done. One attorney only, the county attorney in Duluth, stated that it was not done. He writes:

> In the state of Minnesota it is not necessary to inform the prisoner as to his rights, nor the use to be made of the information; therefore no such statements are made to him.

One chief of police, the superintendent of police at Grand Rapids, stated that it was not done. He writes:

> We do not always state to a man that what he is saying might be used against him, for no man can get the results that he should by first putting him on his guard.

The chief of police in Cleveland writes:

> Every member of this department is instructed and trained that before questioning a prisoner he must make plain . . . what crime he is suspected of . . .; for instance, he may say: "You are suspected of being implicated in the murder of John Doe and anything you say will in all probability be used against you at the trial. I would like to have you make a truthful statement, but it must be voluntary and you need not answer any questions unless you see fit."

The chief of police in Columbus writes:

> We invariably request any person undergoing investigation to make a clean statement as to the facts . . . assuring him that he is under no compulsion to speak. . . If the prisoner is

represented by counsel, his attorney is privileged to be present . . . and no one under arrest, regardless of the charge, is denied the right of counsel prior to the time set for our investigation.

The chief of police in Paterson, N. J., sends the following printed heading which is attached to statements made by accused persons:

POLICE DEPARTMENT, PATERSON, NEW JERSEY

STATE OF NEW JERSEY, Passaic County..... 19..
People State of New Jersey against.....charged with .....The following is a statement made by..... in the presence of.....

This statement was made after the defendant, having been warned of ..... rights that whatever ..... said might be used against ..... in the event of the case going to trial, and that if ..... did not wish to make a statement ..... did not have to and that ..... makes this statement of ..... own free will.

Application of Physical Suffering

The question was asked of both prosecuting attorneys and chiefs of police how far it is proper to go in the infliction of physical suffering. Out of 38 chiefs of police 36 denied emphatically the infliction of any physical suffering. One failed to reply, and one replied concisely: "Governed by circumstances."

Out of the 28 prosecuting attorneys, one made no answer, and 24 expressed positive disapproval. Only three admitted the propriety of such action under any circumstances.

The prosecuting attorney in Kansas City writes:

In case one is convinced that the accused is withholding information necessary to connect and discover the facts, then, in my opinion, threats, deprivation of food and sleep, and in fact anything short of absolute physical torture is justified. The "rule of reason" should be applied, however, in order that injustice may not be done to an innocent man.

The district attorney in Schenectady writes:

No rule can be laid down which could be applicable to all cases. No person should be grilled so far that his answer is involuntary.

The city prosecuting attorney in Springfield, Mass., writes:

I think that such means should be employed only in very rare instances and that the rule should be against it.

Opposition to Physical Suffering

The district attorney in Boston writes:

It is absolutely unpardonable and un-American to resort to any threats or physical violence of any kind or nature. We have long since passed the rack and test of the olden days to wrench from the lips of the prisoner some statement favorable to the government, truthful or otherwise.

The solicitor of the Ninth Judicial Circuit in Charleston, S. C., writes:

The law does not contemplate any such action . . . nor do I believe there is a solicitor in South Carolina who would for one moment stand for such performances.

The prosecuting attorney at Houston writes:

I never commit violence to any prisoner . . . in order to secure a confession; however he may be kept from sleep for as much as 15 hours at one time.

The district attorney in New Orleans writes:

The constitution of Louisiana provides that no person under arrest shall be subjected to any treatment by effect on body or mind to compel confession.

The chief of police in Charleston, S. C., writes:

There is no justification for such barbarism; it does not belong in this age. . . It is questionable whether such statements, extracted by such methods, would contain facts.

The chief of police in Cleveland writes:

The policy and rules . . . of our department strictly prohibit the infliction of any physical punishment on any person in our custody.

The chief of police in Columbus writes:

At no time is any prisoner subjected to any physical punishment or suffering. . . The writer is a firm believer that every prisoner is innocent until proven guilty, and that he has certain inalienable rights as a citizen that must be respected by law enforcement officers. . . Our present methods are meeting with a far greater measure of success than was ever secured by following the old-time police customs.

The chief of police in Springfield, Mass., writes:

I don't think it is necessary to inflict physical suffering on any prisoner whatever by police officers; on the other hand, I don't believe that any prisoner in any city or town in the United States is abused one time in fifty when they say they are.

"Grilling" and Cross-Questioning

The question was asked of prosecutors and chiefs of police: "How far is it advisable to go in the matter of 'grilling' and cross-questioning the accused person?"

Those of you who have undergone a rigid cross-questioning by a shrewd attorney, in open court, protected by your own attorney and the judge on the bench, have realized how exceedingly bitter and even cruel such an examination can be made. Imagine then what it must be to endure a grilling persistently continued for many hours—sometimes for days and nights, ignorant of one's rights and privileges, and deprived of the protection of judge and attorney. It should be borne in mind that this harsh experience is sometimes and perhaps often visited upon accused persons who prove to be absolutely innocent.

There is a marked and surprising difference between the replies received with reference to the infliction of physical suffering and with reference to the infliction of this kind of mental suffering. While 36 out of 38 police officers denied and condemned the infliction of physical suffering, and 24 out of 27 prosecuting attorneys expressed positive disapproval of it, on the other hand, 36 out of 65 replies favored severe grilling and cross-questioning under some circumstances, and 14 approved of grilling as long as might be necessary to get the truth.

The following statement indicates the tenor of the 65 replies received to this question:

	Prosecuting attorneys	Chiefs of police	Totals
Grill as long as necessary to get the truth	6	8	14
Some reply (with cautionary instructions)	5	4	9
Practice to depend on circumstances, as judged by examining officer	5	8	13
Total who favor severe grilling under some circumstances	16	20	36
Opposed to severe grilling	5	10	15
Opposed to all grilling	4	10	14
Total opposition	9	20	29
Grand total replies	25	40	65

We quote the following extracts from replies of prosecuting attorneys who approve of severe cross-questioning in such preliminary inquiries:

The prosecuting attorney in Detroit writes:

It is proper to go to any extent in questioning or grilling a prisoner so long as such methods do not bring forth untrue statements. . . The moment it becomes . . . apparently more advantageous for him to make an untrue statement, contrary to his own interests, than to submit to further questioning or grilling, at that time, and not until then, has the proper scope of such methods been exceeded.

The prosecuting attorney in Grand Rapids writes:

We never resort to any "raw methods" . . . we question insistently . . . when we know from other sources that we are on the right track. We . . . bring him into the office of the chief of police or my office and make him feel perfectly at ease, the idea being to show him that we are not "grilling" him, but that we have the information and wish him to come clean in the interests of justice.

The city prosecuting attorney in Springfield, Mass., writes:

I think that the lengths to which one may properly go in grilling, that is in cross-examination, should be almost unlimited, that is, a proper examination.

The chief of police in Rochester writes:

It is advisable to use all means possible without promises, violence or threats.

On the other hand, the secretary of the police department in Boston quotes as follows from the rules of the police department:

In the examination of prisoners by question or otherwise for the purpose of obtaining confession or information, no police officer shall infringe upon the legal rights, nor shall he subject them to any pressure or procedure of which he would be unwilling to inform a court engaged in a hearing of the case.

THE THIRD DEGREE IN COLUMBUS

The reply to our questionnaire of H. E. French, Chief of Police of Columbus, seems to express pretty nearly the ideal method of conducting preliminary examinations and appears to be worthy of quotation at length. He says:

"1. I am not aware of any state law or city ordinance regulating such inquiries but departmental regulation provides that the

Captain of Police shall conduct investigations in the matter of prisoners arrested by the Uniform Division and the Lieutenant commanding the Detective Bureau conducts investigations in the matter of arrests made by the detectives or plainclothes men. Our rules provide that no physical force, threat or promise shall be made to any prisoner undergoing investigation, and only humane and proper questions and treatment be accorded such individual.

"2. In the matter of investigating cases where persons have been arrested suspected of committing grave crimes, the inquiries are only made by one of the executive officers of the department already referred to.

"3. In the matter of conducting investigations, we do not make any distinction between known criminals and possible first offenders in the manner of propounding questions, for the simple reason that our procedure is based on absolutely reasonable lines and we do not assume, for a minute, that it is a logical conclusion that because a man may have been convicted of a crime on some former occasion, it is a foregone conclusion that he is guilty of the offense that we are investigating. In other words, each matter of investigation must stand upon its own feet and a prisoner's former bad record does not weigh against him or be permitted to warp our judgment in arriving at the truth of the action pending.

"4. We invariably request any person undergoing investigation to make a clean statement as to the facts in the matter, assuring him that he is under no compulsion to speak but that in the interest of justice we must seek by every available means to ascertain all the facts, and that in the end the truth will undoubtedly be made manifest, and he might as well tell the truth at every stage of the investigation. If the prisoner is represented by counsel, his attorney is privileged to be present while we are conducting our investigation and no one under arrest, regardless of the charge, is denied the right of counsel prior to the time set for our investigation.

"5. The writer has never looked with any degree of favor upon the so-called third degree, through which process a prisoner is subjected to a constant cross examination until, from the ceaseless turmoil of his brain and nervous system, he is psychologized into making an alleged confession, as I have already stated. Cross examinations of prisoners are ethical in character and devoid of any of the grilling methods which you suggest, but our experience has demonstrated to our entire satisfaction that the average prisoner is not insensible to kind treatment and a square deal, and we have found that our method has elicited far more legitimate information than any of the older police methods, which are still in use by some departments.

"6. As I have already stated, we do not promise any leniency

when we ask a prisoner to make a statement, but on the contrary assure him that we are not in a position to make him any promise which would in any way mitigate the consequences of his act and at no time is a prisoner threatened in any manner.

"7. At no time is any prisoner subjected to any physical punishment or suffering, is never deprived of food nor of sleep in our investigation cases. The writer is a firm believer that every prisoner is innocent until proven guilty and that he has certain inalienable rights as a citizen that must be respected by law enforcement officers. That at no time does it devolve upon him to prove his innocence, but that, on the contrary, it is incumbent upon us to establish and prove his guilt. While I must admit that perhaps this viewpoint is somewhat unique from a police standpoint, I will say in its defense that our present methods are meeting with a far greater measure of success than was ever secured by following the oldtime police custom."*

An Actual Experience of the Third Degree

The following is a plain, unvarnished tale except as to the names of places:

There was in the city of Cleveland a woman who was superintendent of a large hospital with 500 beds. She was highly educated, a writer, a trained social worker, well bred, a daughter of one of the old families of Cleveland, with a remarkable sense of humor and pleasing manners. Her face carried the marks of her character. She was a good administrator and business woman of the highest character. She was courageous and accustomed to deal with courts and public officers.

She decided to leave Cleveland and to seek a position in non-institutional work in the East. She went to Philadelphia, where she had personal friends, but she chose to stop at a high class boarding house. Six weeks after her arrival a woman living in the house missed a sum of money. The Cleveland woman, being the only stranger in the house, fell under suspicion. Complaint was

* The New York *Evening Post* of December 10, 1921, reports the following interview with Richard A. Bermingham, the detective-sergeant who recently retired after 25 years of detective duty:

"No third degree for Detective-Sergeant Bermingham; no strong arm stuff." When gruff-voiced inquisitors failed to get the confessions of crime Bermingham went in alone and succeeded. He said:

"Every crook has a soft spot in him somewhere, no matter how hard he is on the surface. Find that spot. That is all that you need to do. It may be a wife, or mother, or sister, or sweetheart, or even a dog."

made to the police department and two plainclothes men called at the house and in the presence of the landlady, with whom she had been on the most friendly terms, she was asked a series of questions as to her former residence and occupations, her connections in Cleveland, her motives for leaving there and coming to Philadelphia, and what she had done there. She answered the questions frankly and truthfully. She was then subjected to a three-hour course of involved cross-questioning as to why she had resigned the lucrative position in Cleveland, and why she had come to Philadelphia, why she had chosen this particular boarding house, what special stress of circumstances induced her to take the money, and where she had concealed it. They told her they had followed her for several days. She was questioned first by one and then by the other detective in an effort to secure contradictory statements, to draw out of her admissions which might be prejudicial to her character, until she began to wonder whether she had not really stolen somebody's property. She asked to be taken by these detectives to police headquarters so that she might confer with the official in charge there. They refused to go there with her. She then went to her friends and explained to them her situation. They immediately drove with her to the house of the mayor of the city, and the case was stated to him. He was most indignant to learn that an innocent person should have been under such treatment in that city. The lady then went to see the chief of police. She told him the circumstance, and in a very few minutes he reached the conclusion that a mistake had been made, and humble apologies were offered.

But no apology could atone for the suffering to which this fine woman had been subjected. Thirteen years after this event she said: "I cannot talk about it, I cannot bear to think about it—it is a nightmare to this day."

Such an experience might happen to any man or woman in a strange city when suspicious circumstances arise, as long as irresponsible detectives and police officers are permitted to establish a secret inquisition free from all restraint of law or supervision.

Inadequacy of This Study

We do not pretend that the foregoing is an adequate study of the third degree. It is a very imperfect and inadequate state-

ment, but we believe that the facts proved are important and indicate the need for a thorough study and remedial legislation.

Conclusions

Accepting at their face value all the reports received from the 28 prosecuting attorneys and the 38 chiefs of police, the following facts stand out beyond dispute:

First: Out of 27 states from which reports were received, only five have legislation regulating the preliminary investigation of accused persons by police officers or prosecuting attorneys, while such proceedings are regulated by rules of the police department in seven cities. Out of 51 cities reporting, only 17 came under either state law or police regulation, while in 34 cities the matter is left entirely to the discretion of the chief of police, the chief of detectives, or the individual police officer.

Second: It appears that out of 28 prosecuting attorneys reporting, only five declared in favor of legislation to regulate these proceedings, the objection being that such legislation would tend to hinder the conviction of criminals.

Third: It appears that out of 28 prosecuting attorneys replying, seven expressed the opinion that the principle of law that accused persons may not be compelled to testify against themselves does not apply to such preliminary examinations; that is, in such examinations prisoners may be compelled to testify against themselves.

Fourth: While the 65 public officers who have replied are practically unanimous in denying and disapproving the infliction of physical suffering, 36 of them approve of severe grilling or cross-examination in order to secure confessions; and 14 of these favor the continuance of such grilling as long as may be necessary to secure the desired admissions.

There would appear to be a manifest inconsistency in the attitude taken by many of these public officers. After arrest and prior to commitment to jail, they maintain that it is proper that the prisoner should be deprived of all protection of law; but the moment that he is committed to the county jails he becomes a privileged character, entitled to be treated as if he were innocent until he is proved to be guilty.

Before being brought into court he may be subjected to the most severe and protracted cross-examination without the pres-

ence of an attorney, and may be compelled to furnish evidence against himself; but the moment that he comes into court for trial he is protected by his own attorney; if he is not able to employ an attorney the court designates an attorney who must serve; and the judge and the attorney unite to protect him against being compelled to testify. It is even provided by the laws of many states that his refusal to testify in his own behalf shall not be reckoned against him.

A Remedy for the Evils of the Third Degree

The remedy for the evils which unquestionably exist in the present administration of the third degree in many communities of the United States is to be found in the suggestion which has been made from different sources; namely, the establishment of the office of Public Defender, a competent and experienced attorney to be a permanent public officer.

Let it be provided by law that no person accused of crime shall be examined or interrogated by any public officer in advance of a court hearing until the Public Defender or a deputy appointed by him shall be present; provided that the prisoner may be allowed to employ an attorney at his own expense who may also be present.

Let it be the duty of the Public Defender or the attorney of the accused person to advise him in advance as to his rights and privileges and as to the use which may be made of any confession which he may make.

Let it be forbidden by law to use any promises, threats, or physical force of any kind to influence the prisoner as to what statement he shall make.

In such preliminary examination, let it be forbidden to deprive the prisoner of food or sleep, to subject him to physical or mental suffering, or to conduct a cross-examination for a longer period than two hours or three hours continuously without intervening rest of at least one hour.

This plan of procedure need not interfere with proper efforts of the police or the prosecuting attorney to obtain legitimate information; but it will secure the presence of a disinterested officer of the court upon whom the judge can depend for reliable information as to the legitimacy and the voluntary nature of any confession. At the present time the question becomes a matter

of veracity between the police officer and the prisoner, with the presumption necessarily against the prisoner.

The Public Defender should be made the attorney for the defense, with proper salary, in trials where the prisoner is unable to employ an attorney at his own expense.

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